Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-196

THE STATE OF TENNESSEE, EX REL, ROBERT CONGER, BEN LANGFORD, and JOHN PARHAM, being the elected Board of Commissioners of the City of Jackson, and by virtue of such office, the School Board of the City of Jackson, Tennessee School System,

PETITIONERS,

v.

MADISON COUNTY TENNESSEE, a political subdivision of the State of Tennessee; WALTER BAKER HARRIS, County Judge of Madison County, Tennessee; LEON JOHNSEY, Trustee of Madison County, Tennessee; and TRANSAMERICA INSURANCE COMPANY,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE

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being the elected Board of Commissioners of the City of
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of the City of Jackson, Tennessee School System;
Residents of Madison County, Tennessee,

PETITIONERS,

v.

MADISON COUNTY, TENNESSEE, a political subdivision
of the State of Tennessee;

AND

WALTER BAKER HARRIS, County Judge of
Madison County, Tennessee;

AND

LEON JOHNSEY, Trustee of Madison County, Tennessee;

Residents of Madison County, Tennessee;

AND

TRANSAMERICA INSURANCE COMPANY,

Resident of the State of California

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE

The Petitioners The State of Tennessee, Ex Rel Robert Conger, Et Al, pray that a Writ of Certiorari issue to review the Opinion and Judgment of the Supreme Court of the State of Tennessee rendered in these proceedings on the 26th day of March, 1979, rehearing denied May 29, 1979.

OPINIONS BELOW

The Opinion of the Supreme Court of the State of Tennessee, reported at 581 S.W.2d 632, appears at Appendix A, infra pp. 13. The Opinion of the Court of Civil Appeals, Western Section, State of Tennessee, as yet unreported, appears at Appendix B, infra pp. 41. The Circuit Court of Madison County, Tennessee entered judgment in favor of petitioners; the Court of Civil Appeals, Western Section, reversed the Circuit Court; the Supreme Court of Tennessee granted certiorari and, in a split decision, upheld the reversal, denying re-hearing.

JURISDICTION

The Judgment of the Supreme Court of the State of Tennessee was entered on the 27th day of March, 1979. See Appendix A, p. 13, infra. A Petition for Rehearing was duly filed and denied by the Supreme Court of Tennessee on the 29th day of May, 1979. See Appendix C, p. 44, infra. This Petition for Certiorari was filed less than ninety (90) days from the date aforesaid. The jurisdiction of this Court is invoked under *28 USC Sec. 1257(3)*.

QUESTION PRESENTED

The City of Jackson, Tennessee through its Mayor, Robert Conger, et al, filed a Quo Warranto proceeding against Madison County, Tennessee, and others, seeking

to enjoin Madison County, Tennessee and its officials from, among other things, using Federal Revenue Sharing Funds in a manner not "in accordance with the law and procedures applicable to the expenditure of its own revenue" as required by *Title 31, Sec. 1243(4)1, United States Code Annotated, (Federal Revenue Sharing Law)*. The Circuit Court of Madison County, Tennessee upheld the position of the City of Jackson. The Tennessee Court of Civil Appeals, Western Section, overruled the Circuit Court. The Supreme Court of Tennessee ruled against the City of Jackson's position solely on its interpretation of Tennessee Law, declaring that how Federal Revenue Funds are used under *Section 49-605, Tennessee Code Annotated* is not a federal question and that a county can use such funds without restriction "according to their own perceived demands and objectives." The Federal question was presented to the Tennessee Supreme Court under the following Assignment of Error:

"VII.

The Court erred in that its decision gives to funds derived from Federal Revenue Sharing grants a special protection not applicable to other funds appropriated by Madison County, Tennessee, which special classification is contrary to the specific provisions of Title 31, Sec. 1243(4) U.S.C.A. (Federal Revenue Sharing Law) which specifically provides that local governments:

> '(4) 1 . . . it will provide for the expenditure of amounts received under subchapter I of this chapter only in accordance with the laws and procedures applicable to the expenditure of its own revenue; . . .'."

Petitioner finds no federal court decision on the issue present herein and believes the Tennessee Supreme Court has decided the issue contrary to the manner a federal court will decide same.

The question thereby presented is:

1. Whether or not the decision of the Supreme Court of Tennessee interpreting *Section 49-605, Tennessee Code Annotated*, has caused such state statute to become in violation of the provisions of *Title 31, Section 1243(4)1, United States Code Annotated* by approving and compelling the counties in the State of Tennessee to use Federal Revenue Sharing Funds in a manner not "in accordance with the laws and procedures applicable to the expenditure of its own revenues."

STATUTORY PROVISION INVOLVED

Federal Statute

The Federal Statute involved is commonly referred to as the Federal Revenue Sharing Law and the specific Section invoked is contained in *Title 31, Section 1243(4)1*, which provides as follows:

> "(4) 1 . . . It will provide for the expenditure of amounts received under Sub-Chapter I of this Chapter *only in accordance with the laws and procedures applicable to the expenditure of its own revenues*; . . . ." (Emphasis supplied.)

State of Tennessee Statute

The Tennessee Statute involved is *Section 49-605, Tennessee Code Annotated*, and the applicable portions are copied with emphasis supplied, the entire Code Section appears as Appendix E, p. 61.

"49-605. LEVYING OF SCHOOL TAX - FUNDS - EXPENDITURE - FISCAL ACCOUNTING. - A. *For each school system there shall be levied for current operation and maintenance not more than one school tax for all such grades as may be included in the local school program. Each system shall place in one separate school fund all school revenues for current school operation purposes received from the state, county, and other political subdivisions, if any.*"

". . . *All school funds for current operation and maintenance purposes collected by any county, except the funds raised by any local special pupil transportation tax levy as authorized in this subsection, shall be apportioned by the county trustee among the county, city, and special school districts therein on the basis of the average daily attendance maintained by each, during the current school year. For the purposes of making the apportionment of local school funds as set forth in this subsection, and in defining the average daily attendance for the current school year, the county superintendent of schools and the county trustee shall be guided by the following procedures*: . . . ."

"B. *A city of special school district participating in state minimum foundation school program funds shall raise and expend annually for current operation and maintenance of its schools an amount of money in addition to the amount required to be raised by the county . . . .*"

STATEMENT OF FACTS

The facts relevant to the question presented by this Petition are uncontroverted and, therefore, may be introduced to the Court in a summary fashion.

Madison County, Tennessee operates a County School System in the area of the county outside of the City of Jackson; that the City of Jackson is the largest city within Madison County, Tennessee and operates a City School System within the city borders; that heretofore Madison County, Tennessee, through the Office of County Trustee, in accordance with requirement of *Sec. 49-605, Tennessee Code Annotated*, has apportioned with the City of Jackson School System all school revenues appropriated for current operation and maintenance purposes; that beginning in the fiscal year 1976-77 and continuing through the fiscal year 1977-78 to the present time, Madison County, Tennessee began appropriating to its school fund, for current operation and maintenance purposes, revenue derived both from local sources and from Federal Revenue Sharing Funds received from the Federal Government; that the County Trustee continued to apportion with the City of Jackson that portion of the school fund derived from its own revenue in accordance with *Section 49-605, Tennessee Code Annotated*, but, in furtherance of a deliberate plan of the Madison County Court and Budget Committee, refused to apportion that portion of the school fund derived from funds received under Federal Revenue Sharing; that for the 1976-77 fiscal year this resulted in a loss to the City of Jackson of $190,207.82; in the 1977-78 fiscal year the loss of the City of Jackson totaled $543,214.88; this loss to this City is a continuing loss; that the statewide result of the Tennessee Supreme Court decision is a loss of countless millions to all of

the other city school systems in the state;* that every dollar of Madison County's own revenue appropriated to its school fund for current operation and maintenance had to be apportioned with the City of Jackson School System on a basis of 48.561537 percent to the City and 51.438427 percent to the County, as required by *Section 49-605, Tennessee Code Annotated.* The result of the Opinion of the Supreme Court of Tennessee is to allow counties to appropriate Federal Revenue Sharing Funds into its school fund without the apportionment required of its own revenue which approximately doubles the value of Federal Revenue Sharing money placed in the school fund. It has the opposite and equal result of denying to city school systems that portion of county school funds which otherwise would have been payable through proper apportionment of the entire appropriation.

REASONS FOR GRANTING THE WRIT

1. The decision below directly conflicts with and negates a direct mandate of the United States Congress limiting the use of Federal Revenue Sharing Funds by recipients. The issue is broader than the occurrences in this case alone. The broader issue is whether or not any recipient of Federal Revenue Sharing Funds can, by appropriating the funds in such a manner or for such a purpose as to make the funds subject to the directions of a state statute, effectively wipe away a requirement that such funds be used "only in accordance with the laws and procedures applicable to the expenditure of its own revenue", as required by *Title 31, Section 1243(4)1,*

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*(as evidenced by the amicus appearances of Tennessee Municipal League, and the cities of Athens, Chattanooga, Cleveland, Covington, Dyersburg, Elizabethtown, Etowah, Fayetteville, Friendship, Greeneville, Humboldt, Kingsport, Knoxville, Lenior (City School Board), Memphis, Morristown, Murfreesboro, Newport, Oak Ridge, Rogersville, Sweetwater, Tullahoma and Union City)

United States Code Annotated. This has occurred here if the Opinion of the Supreme Court of Tennessee is allowed to stand.

This is a classic case in that Madison County, Tennessee has appropriated both its own revenue and Federal Revenue Sharing Funds granted to the county into the one fund for the same purposes, that is, into the school fund of Madison County, Tennessee, for current operation and maintenance expense. This is done by virtue of the requirements of *Section 49-605, Tennessee Code Annotated. It is after this appropriation has been accomplished that the school fund is separated by the County Trustee into (1) funds raised locally and (2) into funds derived from Federal Revenue Sharing Grants for the purpose of determining the procedural application of the remaining portions of the statute.*

The remaining applicable portions of the state statute are purely procedural and ministerial, commanding the County Trustee ("shall") to apportion the school fund with city school systems under a formula set out in the statute. The County Trustee apportioned the County Revenue and refused to apportion that portion of the school fund derived from Federal Revenue Sharing funds. This was a deliberate act done in concert with other officials of Madison County, Tennessee for the express purpose of evading the apportionment required by Tennessee law.

A comparison of use between the unearmarked funds received by a Tennessee county from the second one-half of Tennessee state sales tax and funds derived from a Federal Revenue Sharing Grant will reflect that Madison County is not expending Federal Revenue Sharing Funds in "accordance with the laws and procedures under which it expends its own revenue."

Section 67-3052(2)(a), Tennessee Code Annotated, authorizes a county to allocate the second one-half of sales tax collected by the state and paid to the county to "such fund or funds of the county" as it shall direct.

The Supreme Court of Tennessee has very recently established the proper guidelines for the handling of unearmarked funds received by a Tennessee county. The case of *City of Harriman vs. Roane County, 553 S.W.2d 904, page 907C* (Appendix D) commands Roane County unequivocably to apportion its school fund with the City of Harriman School System under the provision of *Section 49-605, Tennessee Code Annotated*, including the second one-half of the state sales tax received by Roane County which is not earmarked for any particular purpose.

Both the second one-half sales tax and Federal Revenue Sharing Funds come to the county without limitation or direction except that contained in the Federal Revenue Sharing Law which is ited above. No county in Tennessee is compelled to appropriate either sales tax money or Federal Revenue Sharing money into its school fund. A county must elect to do so.

Once a county elects to appropriate its revenue, from whatever source, into its school fund in accordance with *Section 49-605, Tennessee Code Annotated*, it is the position of the petitioner that all distinction between these funds has been lost unless a direct violation is going to result by using Federal Revenue Sharing Funds in a different manner than the use to which other county revenue is applied. That is what is occurring in this case.

The County is required by *Title 31, Section 1243(4)1, United States Code Annotated*, to disburse Federal Rev-

enue Sharing Funds "*only in accordance with the laws and procedures applicable to the expenditure of its own revenue.*" If this can occur in this case, then the violations which can occur in other areas, as far as the use of Federal Revenue Sharing Funds is concerned, will only be limited by the imagination of the various state legislatures in all areas.

It is the position of the petitioner that the total funds appropriated into the school fund must follow the same law and procedure. The Opinion of the Tennessee Supreme Court holds that this is not so; that *local revenue must be apportioned* under the provisions of *Section 49-605, Tennessee Code Annotated*, with the special or city school districts within Madison County, Tennessee while *Federal Revenue Sharing Funds used for the identical purposes need not be so apportioned, for no other reason than the fact that these are Federal Revenue Sharing Funds.* In the opinion of the petitioner, this is in direct violation of the requirement of *Title 31, Section 1243(4)1, United States Code Annotated (Federal Revenue Sharing Law)*.

The Supreme Court of Tennessee in the prevailing Opinion addresses the above question, beginning on page 6 of such Opinion, and holds that there is no Federal question present; that the formulae for distribution of Federal Revenue Sharing Funds are not equitable and that local governments are free to spend Federal funds

> "according to their own perceived demands and objectives" . . . "they are Federal Sharing Funds, and their use must lie in the sound management and discretion of the County Government". (Page 13).

Finally, the Supreme Court's prevailing Opinion declares (on page 14).

> "Again, in the instant case we do not deal with conventional state or county revenues, but with funds that come to local governments with the restriction that they will be expended 'in accordance with the laws and procedures applicable to the expenditure of its own revenues'." *31 USC 1243(a)4.* "There is no Tennessee law that 'precludes the use of these funds for any legitimate county purpose'."

It is apparent that the prevailing Opinion missed the question entirely. It is true that there is no Tennessee law that precludes the use of these funds for any legitimate county purpose. It is, however, equally and predominantely true that there is a Federal Law restricting the manner in which Federal Revenue Funds may be used by a county.

The General Assembly of the State of Tennessee, in Chapter 9, "*Appropriation and Disbursement of Funds*," under the general provisions, "*Counties*", has specified in *Section 5-924 Tennessee Code Annotated* that Federal funds are county funds:

> "5-924. APPROPRIATION OF CERTAIN FUNDS TO USE OF VARIOUS DEPARTMENTS AND AGENCIES. - All funds whatever source derived, including but not limited to taxes, county aid funds, *federal funds*, and fines, which are to be used in the operation and respective programs of the various departments, commissions, institutions, boards, offices, and agencies of county governments ***shall be appropriated to such use by the county legislative bodies.***" (Emphasis supplied.)

This statute clearly identifies and authorizes both local revenue and "federal funds" for county use as one and the same, the Federal Revenue Law requires only that both funds be used the same. In this case the funds were not used the same, resulting in a windfall profit to counties and a resulting equal loss to city school systems in Tennessee.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the Judgment and Opinion of the Supreme Court of the State of Tennessee.

Respectfully submitted,

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Counsel for Petitioners

OF COUNSEL

RICE & RICE

APPENDIX A

581 SOUTH WESTERN REPORTER, 2d SERIES

[632]

STATE of Tennessee, ex rel. Robert CONGER et al.

v.

MADISON COUNTY et al.

Supreme Court of Tennessee.

March 26, 1979.

Rehearing Denied May 29, 1979.

City commissioners brought action against county challenging failure of county to apportion the revenue sharing funds which it allocated to the school system to a special school district within the county.

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The Law Court, Madison County, Gene Walker, J., granted relief and county appealed. The Court of Appeals reversed and certiorari was granted. The Supreme Court, Henry, C. J., held that: (1) federal revenue sharing funds may be used by the county for school purposes, and (2) federal revenue sharing funds allocated by the county to the schools need not be apportioned to the county schools, city schools, and special schools.

Affirmed.

Fones, J., filed an opinion concurring in the result in which Cooper, J., concurred.

Brock, J., filed a dissenting opinion.

1. United States 82(2)

Federal Revenue Sharing Act was designed to return to state and local communities revenue collected by the federal government for use according to their own perceived demands and objectives and not those of the federal government. (Per Henry, Chief Justice, with one Justice concurring and two Justices concurring in the result.) State and Local Fiscal Assistance Act of 1972, § 102 et seq. as amended 31 U.S.C.A. § 1221 et seq.

2. United States 82(2)

Federal revenue sharing funds are not earmarked for any specific purpose and, upon their receipt by a county, they become subject to appropriation and use by the quarterly court. (Per Henry, Chief Justice, with one Justice concurring and two Justices concurring in the result.) State and Local Fiscal Assistance Act of 1972, § 102 et seq. as amended 31 U.S.C.A. § 1221 et seq.

3. Schools 92(1)

Quarterly court had the authority to appropriate revenue sharing funds for use in the operation and maintenance of the school system. (Per Henry, Chief Justice, with one Justice concurring and two justices concurring in the result.) State and Local Fiscal Assistance Act of 1972, § 102 et seq. as amended 31 U.S.C.A. § 1221 et seq.; T.C.A. § 49-605.

4. Counties 158

United States 82(2)

No Tennessee law precludes the use of federal revenue sharing funds by a county for any legitimate purpose. (Per Henry, Chief Justice, with one Justice concurring and two Justices concurring in the result.) State and Local Fiscal Assistance Act of 1972, § 123(a)(4) as amended 31 U.S.C.A. § 1243(a)(4).

5. Schools 93

Statute requiring that school funds received from the state, county, and other political subdivisions must be apportioned by the county trustee among the county, city, and special school districts therein is not applicable to federal revenue sharing funds as the federal government is not a "political subdivision." (Per Henry, Chief Justice, with one Justice concurring and two Justices concurring in the result.) State and Local Fiscal Assistance Act of 1972, § 123(a)(4) as amended 31 U.S.C.A. § 1243(a)(4); T.C.A. § 49-605.

See publication Words and Phrases for other judicial constructions and definitions.

6. Schools 93

Portion of the county's share of federal revenue sharing funds which the county allocates to the school fund is not required to be apportioned among the special school districts in the county. (Per Henry, Chief Justice, with one Justice concurring and two Justices concurring in the result.) State and Local Fiscal Assistance Act of 1972, § 123(a)(4) as amended 31 U.S.C.A. § 1243(a)(4); T.C.A. § 49-605.

Russell Rice, Rice & Rice, Sidney W. Spragins, Jackson, for petitioners.

Hewitt P. Tomlin, Jr., George R. Fusner, Jr., Waldrop, Hall, Tomlin & Farmer, Jackson, for respondent Madison County.

[634]

Jack Manhein, Jackson, for respondent Transamerica Ins. Co.

Thomas E. Fox, Franklin, for Williamson County, amicus curiae.

Edward G. Kelly, Jr., Cobb, Edwards, Hamlet, Nichol & Woodall, Memphis, for Bd. of Ed., Memphis City Schools, amicus curiae.

Charles E. Griffith, Robert C. Evans, Griffith & Stokes, Nashville, for Tennessee Municipal League, et al., amicus curiae.

Charles A. Maner, Jr., Dale C. Workman, Knoxville, for Knox County and Judge C. Howard Bozeman, amicus curiae.

OPINION

HENRY, Chief Justice.

The principal issue before the Court is whether Federal Revenue Sharing Funds allocated to a county and, by its Quarterly Court, transferred to the County School Fund, must be apportioned with a special school district within the county under § 49-605, T.C.A.[1] The Trial

1. The apportionment provision is now codified in § 49-614, T.C.A., which contains new acronyms, e. g., WFTEADA (weighted full-time

(Continued on next page)

Judge responded in the affirmative; the Court of Appeals in the negative; we agree with the Court of Appeals.

A preliminary issue, but one of pivotal importance, is whether such funds may be used by a county for school purposes.

We hold that they may.

I.

History of the Lawsuit

This action was instituted on August 24, 1977 in the Circuit Court at Jackson by the three Commissioners of the City of Jackson, who, by virtue of their office constitute the School Board of the City of Jackson, which maintains its own school system, operating wholly within the city.

Named as parties defendant were Madison County, the County Judge,[2] the County Trustee, and the surety on the Trustee's official bond.

The complaint alleges, and the trial judge found, that during the early part of 1977 the Quarterly Court of Madison County appropriated to the Madison County General Purpose School Fund, for maintenance and oper-

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[1](Continued)

equivalent average daily attendance), in place of ADA. Section 49-602, **et seq.** contains the statutory provisions relating to the State Foundation Program, and was derived from Chapter 289, Acts of 1977. References in this opinion are to § 49-605, T.C.A., as it appears in main Volume 9, T.C.A.

2. This action was instituted and all pertinent events occurred prior to the 1978 amendment to Article VII, Sec. 1 of the Constitution of Tennessee, which, **inter alia**, created the office of County Executive. This amendment was adopted in convention on December 6, 1977, approved by the people on March 7, 1978, and proclaimed by the Governor on March 31, 1978.

ating purposes, the sum of $201,476.00 from Federal Revenue Sharing Funds, and that this sum was not apportioned with the City of Jackson.

It is further averred and established by the proof that the Quarterly Court, in its budget for the fiscal year ending in 1978, appropriated from Federal Revenue Sharing Funds to the Madison County School System the sum of $565,822.51, accompanied by a stated intention that those funds would not be apportioned in accordance with the City's view of the mandate of § 49-605, T.C.A. These funds also were appropriated for maintenance and operation.

The trial court held that apportionment was required under § 49-605, T.C.A., and should have been accomplished by using the average daily attendance (ADA) computations. The ADA ratio between the two systems indicated that the City of Jackson's share was 48.561537% and that of Madison County, 51.438427%.

From these figures, the Trial Judge found that it would have required a total

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appropriation of $391,683.82 to validate the appropriation to the Madison County System. This would have resulted in an apportionment of $190,207.82 to the City of Jackson. Therefore, he awarded judgment against Madison County in this amount.

He further found that the County Trustee had knowingly failed to apportion the $565,822.51 appropriated for fiscal

year 1978 and that the "Defendants in this case openly state that they do not intend to make such apportionment as required by [section 49-605] . . . ." In this connection he held that "the determination not to apportion in both instances was made by the Madison County Quarterly Court and such decision was communicated by the County Judge to the County Trustee."

Responding to the prayer for a declaratory judgment, the Trial Judge held:

> that all funds, including funds derived from Federal Revenue Sharing Grants, lawfully appropriated by the Madison County Quarterly Court for the current operation and maintenance of county schools must be placed in one separate school fund and apportioned between [the two systems] in accordance with the provisions of Section 49-605 Tennessee Code Annotated.

He "strictly and permanently enjoined" the Madison County Quarterly Court, the County Judge and the County Trustee to make such apportionments "now and hereafter."

To insure the collection of the judgment against Madison County, he ordered the county to levy a tax on all real estate in the county or to provide for payment by 31 December 1978.

The Surety on the Trustee's official bond was dismissed.

To enforce his decree writs of mandamus, injunction, and execution were awarded.

To summarize, the Trial Judge held that § 49-605, T.C.A. required that Federal Revenue Sharing Funds

appropriated for current operation and maintenance of county schools must be apportioned, and ordered the Quarterly County Court, the County Judge, and the County Trustee to make the apportionment now and hereafter. He gave judgment against the county and awarded appropriate extraordinary process.

The record fully supports all factual findings and we concur in them.

The Court of Appeals, in a brief opinion, held that § 49-605, T.C.A. "has no application to funds received by Madison County under the State and Local Fiscal Assistance Act of 1972, as amended."

We examine these divergent legal conclusions.

II.

Federal Revenue Sharing Act[3]

We think an orderly consideration of this action must start with the Federal Revenue Sharing Act.

[1] This act was designed to return to state and local communities revenue collected by the federal government for use "according to their own perceived demands and objectives and not those of the federal government." *Carolina Action v. Simon*, 389 F. Supp. 1244, 1248 (M.D.N.C. 1975).

It should be noted at the outset that, in its original form, the act restricted the use of these federal funds to "priority expenditures." Education was not an enu-

3. The correct title of this law is the "State and Local Fiscal Assistance Act of 1972." We elect to use the popular name.

merated permitted use. *See* 31 U.S.C. § 1222. This section was repealed by Pub. L. 94-488, § 3(a), 90 Stat. 2341, October 3, 1976.

The statutory scheme of distribution is somewhat cumbersome and tends to be confusing. It is not required that we deal with it in detail. The allocation among states is determined by 31 U.S.C. § 1225.

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The amount allocated to each state is divided one-third to the state government and two-thirds to local governments, 31 U.S.C. § 1226, on the basis of a formula derived from the Act. The two-thirds allocated to local governments is distributed on the basis of a formula reflected in 31 U.S.C. § 1227. Generally speaking, the local government share is allocated to county areas on the basis of the ratio that the population of the county, multiplied by the general tax effort factor of that county area, multiplied by the relative income factor, bears to the sum of that figure for all county areas in the state. 31 U.S.C. § 1227(a).

The county area share is divided between the county and all municipalities of the county. The allocation to a county government is on the basis of the ratio the adjusted taxes of the county government bears to the adjusted taxes of the county government and all other units of local government located in the county area. 31 U.S.C. § 1227(b)(1).

The remaining funds are then allocated among the municipalities (in Tennessee) located in the county area.

31 U.S.C. § 1227(b)(2). As a result, the municipalities within a county area *collectively* receive their allocations in the same manner as do counties. The allocation *among* the municipalities is based upon a formula taking into consideration population, general tax effort, and relative income. 31 U.S.C. § 1227(b)(2).

Attached hereto as an Appendix is a flow chart designed to show generally the distribution of these funds. It is included solely to clarify this opinion, and should only be used for that purpose. The details of the various formulae and other factors not shown in this appendix are set forth in Chapter 24, Title 31, U.S.C.

As will be seen by this narration and by reference to the appendix, the City of Jackson has already received an allocation of Federal Sharing Funds, wholly separate and apart from those received by Madison County. The entitlement of all government units is determined by computer and the distributions are made directly to the local governments from the Federal Sharing Office in Washington, D. C. May the City of Jackson receive a portion of the funds allocated to the county?

Federal statutes alone do not provide the answer. In order to qualify for the federal funds, a county or municipality . . . must establish . . . to the satisfaction of the Secretary that—

* * *

(4) It will provide for the expenditure of amounts received under subchapter I of this chapter only in accordance with the laws and procedures applicable to the expenditure of its own revenues. 31 U.S.C. § 1243(a)(4).

Thus, the answer to the question presented in this action lies in the statutes of the State of Tennessee.

III.

Source, Use, and Nature of County Funds

[2] Federal Revenue Sharing Funds are not earmarked for any specific purpose. Upon their receipt by a county, they become subject to appropriation and use by the Quarterly Court.

In attempting to clarify the nature and permissible use of these funds, our statutory law is not particularly helpful. For instance, § 5-801, T.C.A., undertakes to inventory all sources of county revenue. It reads:

> County revenue is derived from taxes on polls, property, privileges, litigation, merchants, peddlers; from strays, fines and forfeitures, as below [See Section 5-802 through 5-805], and from money remaining unclaimed more than two (2) years in clerk's offices.

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It is obvious that this statute is hopelessly out of date and that Federal Revenue Sharing Funds, now a major source of county revenue, do not fit into any of the listed classifications.

There is, however, another statute, not cited by the principal parties, but relied upon by the Surety on the Trustee's bond, which we consider to be highly significant. Section 5-924, T.C.A. reads as follows:

> All funds from whatever source derived, including but not limited to taxes, county aid funds, *federal funds*, and fines, which are to be used in the operation and respective programs of the various departments, commissions, institutions, boards, offices, and agencies of county governments shall be appropriated to such use by the county legislative bodies. (Emphasis supplied)

It should be noted that this statute, as originally enacted in 1959 did not include federal funds. By Chapter 615 of the Public Acts of 1976 the original language was changed by adding the words "federal funds." No other change was made. Section 49-605, however, was not amended.

[3] It would seem clear that the Quarterly Court of Madison County had the authority, under this statute, to appropriate Federal Revenue Sharing Funds to use in the operation and maintenance of the school system. Indeed, independent of this statutory authorization, it would seem that the Quarterly Court had the authority to place these revenues in any of the County's funds, including the school fund.

There is, however, a line of cases that at least superficially tends to indicate a contrary result.

In *State ex rel. Davidson County Board of Education v. Pollard*, 124 Tenn. 127, 136 S.W. 427 (1910), the question presented to the Court was whether a county court had the authority to make an appropriation out of the general fund of a county for school purposes. Responding in the negative, the Court held that

> county purposes are of two-kinds, general county purposes and special county purposes, and that

> .moneys raised by taxation for special county purposes cannot be used for a general county purpose, and that money raised for general county purposes cannot be used for a special county purpose. 124 Tenn. at 130-31, 136 S.W. at 428.

The Court quoted with approval the following language from *Kennedy v. Montgomery County*, 98 Tenn. 165, 179, 38 S.W. 1075, 1079 (1897):

> The taxpayers of every county have a right to know for what purpose they are being taxed, and also to know that taxes collected from them for any special purpose are applied to such purpose, and not to some other, at the discretion of county officials, and according to their ideas of public policy or expediency. *The law does not provide for the mixing of special and ordinary funds, nor the supplementing of one by the other by county officials.* (Emphasis in original) 124 Tenn. at 135, 136 S.W. at 429

The *Pollard-Kennedy* rationale was followed in *Board of Commissioners of Union City v. Obion County*, 188 Tenn. 666, 222 S.W.2d 7 (1949). In that case it appeared that the county had paid a bonus to teachers in the county schools, and had funded it by a transfer from the "General Fund" to the "School Fund." Pointing out that the general fund "had been levied and collected for specific county purposes," the Court held that "[t]he mere fact that . . . the money was passed through the elementary school fund prior to its disbursement . . . did not change the nature of the money or make it legally a part of the elementary school fund." Therefore, the Court held it "remained a part of the County's 'General Fund'" and could not be diverted. 188 Tenn. at 670, 222 S.W.2d at 8.

An equally strong case is *State ex rel. Baird v. Wilson County*, 212 Tenn. 619, 371 S.W.2d 434 (1963). In that case the County Quarterly Court had diverted money from the county general fund for elementary school purposes. Relying upon *Obion County, supra* and *State, ex rel. Cope v. Davidson County*, 198 Tenn. 24, 277 S.W.2d 396 (1955), (fund derived from special tax for teacher transportation was in reality a means for increasing salaries without making a devise with the City of Nashville) the Court said:

> Both the *Obion County* case and the *Davidson County* case clearly state that funds derived from taxes levied for one purpose, when transferred by the Quarterly County Court to the school fund, do not become a part of the funds to which transferred. The unauthorized and *ultra vires* resolution of the County Court diverting funds from the legitimate purpose for which the tax to produce such funds had been levied does not change the nature of the fund or make it legally a part of the fund to which it is thus wrongfully transferred. 212 Tenn. at 626, 371 S.W.2d 438.

If we hold these cases to be applicable, it would logically follow that Federal Revenue Sharing Funds may not be used for the maintenance and operation of public schools in the county, and that such a use would be an unauthorized diversion. Pursuant to such a holding the county would have to transfer the funds to the County General Fund and there could be no apportionment.

Such a holding would frustrate the purpose of the act, which is to permit local governments to "spend these funds according to their own perceived demands and objectives." Further, it would be contrary to § 5-924, T.C.A. which provides, *inter alia*, that "[a]ll . . . federal funds . . which are to be used [for various county purposes] shall be appropriated to such use by the county legislative bodies."

Finally, such a holding would contradict common sense and, in effect, make these funds unusable for any purpose. It must be borne in mind that these are not conventional county revenues raised by conventional tax levies. They are Federal Sharing Funds, and their use must lie in the sound judgment and discretion of the county government.

The cases noted above involve the unauthorized diversion of conventional tax revenues raised for specific and itemized purposes. Therefore our courts consistently and correctly have held that tax revenues raised for stated public purposes may not be diverted. Federal Revenue Sharing Funds, however, are not derived from county tax levies and collected for designated purposes.

We, therefore, hold that Federal Revenue Sharing Funds may be allocated for school purposes.

Nothing in our recent case of *City of Harriman v. Roane County*, 553 S.W.2d 904 (1977) alters this conclusion. In that case we were dealing with conventional county revenues, expenditure of which is governed by state statutory and decisional law. We held that the proceeds of the wholesale beer tax could not lawfully be appropriated to school purposes "without specific statutory authoriza-

tion," 553 S.W.2d at 907, and that although the second half of the retail sales tax proceeds could be so used, they must be apportioned in accordance with § 49-605, T.C.A.

[4] Again, in the instant case we do not deal with conventioned state or ɔunty revenues, but with funds that come to local governments with the restriction that they will be expended "in accordance with the laws and procedures applicable to the expenditure of its own revenues." 31 U.S.C. § 1243(a)(4). There is no Tennessee law that precludes the use of these funds for any legitimate county purpose.

IV.

Apportionment

The remaining question is whether these funds must be apportioned with the City of Jackson. We respond in the negative.

[639]

Section 49-605, T.C.A. provides, in pertinent part as follows:

> For each school system there shall be levied for current operation and maintenance not more than one school tax for all such grades as may be included in the local school program. Each system shall place in one separate school fund all school revenues for current school operation purposes ***received from the state, county, and other political***

> *subdivisions, if any,* . . . All school funds for current operation and maintenance purposes collected by any county, [except for transportation tax levy funds] shall be *apportioned* by the county trustee *among the county, city and special school districts therein* on the basis of the average daily attendance maintained by each, during the current school year. (Emphasis supplied)

[5] By its very phraseology, this statute cannot be applicable to Federal Revenue Sharing Funds, the source of which is the Federal Government. Money received from the Federal Government obviously is not received from a state, county, or other political *subdivision*. The political facts of life are that the Federal Government is in no sense a "political subdivision."

The apportionment provision for "[a]ll school funds for current operation and maintenance purposes collected by any county" simply refers to all funds collected or received from the state, county, or other political subdivision. It adds nothing to the scope and extent of the definition of the funds embraced within the statute.

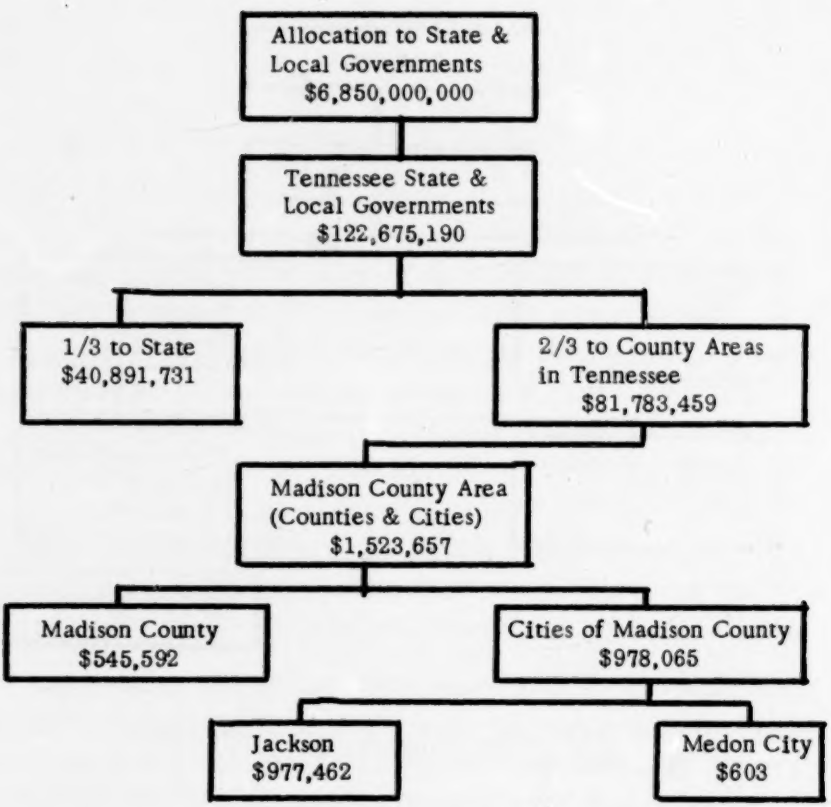
Section 49-605, T.C.A. embraces all funds received from the state, raised by local taxation, or derived from appropriate bond issues. It is inapplicable to Federal Revenue Sharing Funds, which may or may not be used for school purposes.

[6] We, therefore, hold that a county's share of Federal Revenue Sharing Funds, allocated to the County School Fund, is not subject to the provisions of § 49-605, T.C.A. and, therefore need not be apportioned among the special school districts of a county.

This result not only is dictated by the language of the statute, but is commanded by considerations of equity and fundamental fairness. Under the formula heretofore discussed, the City of Jackson has already received its fair share of Federal Revenue Sharing Funds. This suit represents an effort to encroach upon the County's share. If we were to hold in the City's favor, the County would have to pay the City the sum of $190,207.82 as a result of having appropriated $201,476.00 to the School Fund, leaving a net gain of $11,268.18. This would be unconscionable.

There appears in this record a chart which we think validates the equitable conclusions we reach. This chart is based upon the ninth entitlement period covering the period from 1 October 1977 through 30 September 1978. It shows the result of the application of the various pertinent formulae.

[See following illustration.]


Allocation to State & Local Governments $6,850,000,000
Tennessee State & Local Governments $122,675,190
1/3 to State $40,891,731
2/3 to County Areas in Tennessee $81,783,459
Madison County Area (Counties & Cities) $1,523,657
Madison County $545,592
Cities of Madison County $978,065
Jackson $977,462
Medon City $603

The pie has already been sliced; we are not willing to slice it again.

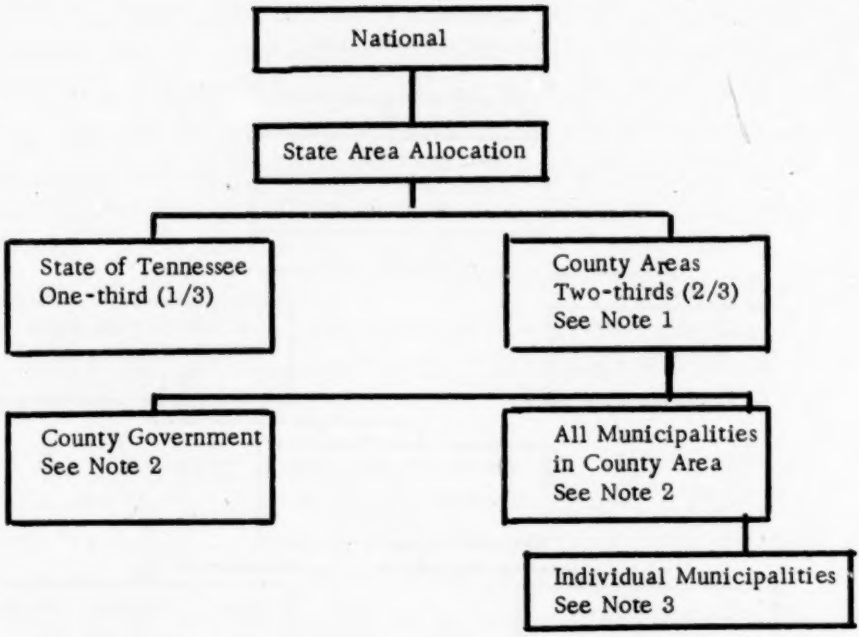
Section 49-605, T.C.A. came into existence long before Revenue Sharing came upon the scene. If the conclusions we reach are not in the public interest, the General Assembly should be requested to scrutinize § 49-605, T.C.A. in the light of the distribution of federal funds to the local governments of Tennessee.

Affirmed.

FONES, J., concurs with opinion.

COOPER and HARBISON, JJ., concur.

BROCK, J., dissents with opinion.



Notes on Distribution to Local Governments

1. **First** allocation is to county areas on basis of population multiplied by general tax effort multiplied by relative per capita income. This fixes the ratio each of the 95 county areas bears to all 95 such areas.

2. **Second** allocation is to county government and all municipalities in the county on the basis of adjusted taxes.

3. **Third** allocation is among the various municipalities on the basis of population x tax effort x relative per capita income.

FONES, Justice, concurring in result.

The Chief Justice has written an excellent opinion, exploring every avenue that might lead the Court to the correct judicial resolution of this dispute between the City of Jackson and the County of Madison. But the intractable problem presented must, in the final analysis, be answered by an interpretation of T.C.A. § 49-605. The difficulty in finding the correct judicial solution of the problem in that section lies in the fact that there is no express language in the statute that dictates either result, and an attempt to ascertain legislative intent is, in my opinion, inappropriate because the section was enacted prior to the existence of federal revenue sharing.

My brother Brock has written an excellent, well reasoned opinion, but I do not share his conviction that *City of Harriman v. Roane Co., supra*, and *Board of Education v. Shelby Co., infra*, control the disposition of this case. Like the dissent, I do not concur in predicating the decision, in whole or in part, on equitable considerations. This record is inadequate to enable me to pass judgment on the equities. In my opinion, the equities of slicing the federal revenue sharing pie are appropriate for the legislative halls only.

I concur in the result reached by the majority only because T.C.A. § 49-605 can be read to say that the expression "all school funds" is modified by the phrase "received from the state, county and other political subdivisions", and therefore carries no mandate that federal revenue sharing funds be apportioned.

COOPER, J., concurs.

BROCK, Justice, dissenting.

I, respectfully dissent. In my view, the majority has given an erroneous construction to T.C.A., § 49-605, subsection A, which provides:

> "All school funds for current operation and maintenance purposes collected by any county, except the funds raised by any local special pupil transportation tax levy as authorized in this subsection, shall be apportioned by the county trustee among the county, city, and special school districts therein on the basis of the average daily attendance maintained by each, during the current school year." [1]

The language employed by the Legislature is all inclusive. It purports to control "[*a*]*ll* school funds for current operation and maintenance purposes" and requires that they be apportioned by the trustee of the county among all school systems in the county whether operated by the county, city or other special school district. The only exception authorized is such funds as result from a local special pupil transportation levy. It is clear to me that the Legislative intent is evident and that the quoted provision requires apportionment of county school funds which are appropriated for current operation and maintenance purposes, regardless of the sources of such funds; so that, Federal revenue sharing funds which are allocated for such school purposes must be apportioned under this provision..

1. This mandate is re-stated in paragraph "5" of subsection A.

Our recent decision in *City of Harriman v. Roane County*, Tenn., 553 S.W.2d 904 (1977) supports this view. Speaking for a unanimous Court, Mr. Justice Harbison, after noting that funds raised by a county from a special tax levy for the purpose of "the building, repair and equipment of county schools" were not required by the above quoted statute to be apportional with other school systems in the county, further stated:

> "Where, however, the county does not make such a special purpose levy, but lawfully appropriates funds to current school operations, as has been done here with the portion of sales tax at issue, then those funds become subject to the apportionment provisions of the general school statutes." 553 S.W.2d at 909.

In the course of that opinion, we also quoted with approval from *Board of Education of the Memphis City Schools v. Shelby County*, 207 Tenn. 330, 339 S.W.2d 569 (1960) as follows:

[643]

> "In that case a private act purporting to authorize a different distribution of funds between the city and county school systems from that provided in what is now T.C.A. § 49-605 was held unconstitutional and potentially disruptive of the uniform system contemplated by the general statutes.
>
> "In that case, the Court said:
>
> > 'The general purpose and plan of the Education Acts passed by the Legislature of Tennessee,

beginning with the Act of 1925, referred to hereinabove, was to establish and maintain a *uniform system* of public education in this State, public education being primarily a State function. The philosophy permeating such general uniform plan, as set out in said General Education Acts, in so far as pertinent to the issues in these causes, provides for a division of all county school funds, with the exception of funds for the transportation of pupils attending the public schools, between the County School System and the School systems operated by municipalities or special school districts, such as the City of Memphis and its Board of Education, within the county, on a proportional basis of the average daily attendance of pupils attending the various schools in a county.' 207 Tenn. at 345, 339 S.W.2d at 576.

"Further, the Court said:

'Education of the youth of each county is the primary purpose of our State Educational System as reflected throughout all of its General Education Acts, and the apportionment of local school funds under the general law on the basis of average daily attendance of pupils in the various schools gives to every school system its proportional and fair share of said funds, so, in a sense, each pupil may be afforded the same opportunity to obtain an edcuation, regardless of place of residence.' 207 Tenn. at 351, 339 S.W.2d at 578." 553 S.W.2d at 908.

This Court stated further in the *City of Harriman* case:

"The provisions of T.C.A. §49-605 are mandatory. They require that all school funds for current operations and maintenance purposes collected by a county, except those used for pupil transportation, 'shall be apportioned by the county trustee, among the county, city, and special school districts therein on the basis of average daily attendance maintained by each, during the current school year.'" 553 S.W.2d at 908.

It appears clear to me that the majority in the case at bar have departed from the liberal and very sound construction of T.C.A., §49-605, laid down 19 years ago in *Board of Education of the Memphis City Schools v. Shelby County*, *supra*, and again only 18 months ago in *City of Harriman v. Roane County*, *supra*. In holding that the apportionment mandate of T.C.A., §49-605, does not apply to "Federal revenue sharing funds" although those funds are appropriated by the county for current operation and maintenance school purposes, the majority has engrafted into the statute an additional exception which should read as follows:

". . . and except for such funds as a county may receive from the Federal government as revenue sharing funds."

Certainly the language of the statute does not require such an exception. Moreover, I think it clear that the judicially added exception of Federal revenue sharing funds is contrary to the manifest legislative intent, i. e., that the education of every school child in a given county of this state shall be supported by an equal number of dollars without regard to whether the child is a student of the county school system, the city school system or

the system of some other special school district within the county and also without regard to the source of such school funds. The majority permits Madison County to appropriate huge sums of money for the education of children of the Madison County school system without apportioning those funds with the City of Jackson school system, merely because the source of those funds was a Federal "revenue sharing" grant.

[644]

The result thus reached by the majority is not required by the applicable Federal law, for, as pointed out in the majority opinion, the Federal act merely provides that Federal revenue sharing funds shall be expended ". . . in accordance with the laws and procedures applicable to the expenditure of its (county's) own revenues." 31 U.S.C., § 1243(a)(4). "Its (Madison County's) own revenues," once appropriated for current operation and maintenance purposes, as was done by the Madison County court in this case, are required by T.C.A., § 49-605, to be apportioned on the basis of average daily attendance with the City of Jackson school system. As we held in *City of Harriman*, *supra*, once the county ". . . lawfully appropriates funds to current school operations, . . . then those funds become subject to the apportionment provisions of the general school statute." 553 S.W.2d at 909.

The majority notes that to hold that T.C.A., § 49-605, requires the apportionment of Federal revenue sharing funds with other school districts within a county does not comport with its notions of "considerations of equity and fundamental fairness." Referring to the fact that the

city also receives Federal revenue sharing funds from the Federal government, the majority notes that "[t]he pie has already been sliced; we are not willing to slice it again." However, it should be noted that the "pie" was not doled out by the Federal government to the school system of Madison County or the school system of the City of Jackson; it was doled out to the county of Madison and the City of Jackson each of which was free to expend funds for purposes other than the current operation and maintenance of its school system. Once the county appropriated those funds for the current operation and maintenance of its county school system, however, they became subject to the apportionment required by T.C.A., §49-605.

I would reverse the judgment of the Court of Appeals and affirm that of the trial court.

OPINION ON PETITION TO REHEAR

HENRY, Chief Judge.

The petition to rehear is respectfully denied.

Much of the petition takes two members of the Court to task for allegedly applying a "balancing of the equities" test. The opinion shows facially that equitable considerations formed no part of the Court's construction of the statute. After construing Section 49-605, T.C.A., and holding that it was inapplicable to Federal Revenue Sharing Funds, we said:

> This result not only is dictated by the language of the statute, but is commanded by consideration of equity and fundamental fairness.

Thus, it is evident that the matter of "balancing equities" formed no part of the statutory construction consideration. Moreover, three members of this Court expressly disapproved these considerations, thus rendering this portion of the opinion dicta and ineffective.

This Court is acutely aware of the financial considerations involved and is not unsympathetic to the problems of the City of Jackson. The City's prayer for relief must be addressed to the General Assembly. We have construed the appropriate statutes and are satisfied with the conclusions we have reached.

All members of the Court continue to adhere to their previously expressed views.

FONES, COOPER, BROCK and HARBISON, JJ., concur.

APPENDIX B

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

STATE OF TENNESSEE, EX REL. ROBERT CONGER, ET AL.,	:	
PLAINTIFFS-APPELLEES,	:	Madison Law
VS.	:	
MADISON COUNTY, TENNESSEE, ET AL.	:	Honorable Gene Walker, Judge
DEFENDANTS-APPELLANTS.	:	

(Filed June 2, 1978)

Hewitt P. Tomlin, Jr. of Jackson for the appellants, George R. Fusner, Jr., Waldrop, Hall, Tomlin & Farmer of counsel.

Rice & Rice of Jackson for the appellees.

Jack Manhein, Jr. for Transamerica Insurance Company.

Amicus curiae brief of Loudon County, Bland D. Winfrey, Arnold, Winfrey & Simpson of Lenoir City.

Amicus curiae brief of Williamson County, Thomas E. Fox.

Amicus curiae brief of Knox County and C. Howard Bozeman, County Judge, Charles A. Maner, Jr. and Dale C. Workman of Knoxville.

Amicus curiae brief of Shelby County, Leo Bearman, Jr. of Memphis.

Amicus curiae brief of Blount County and its County Judge, Clyde McMahan, Jerry Cunningham and William B. Felknor.

Amicus curiae brief of Tennessee Municipal League, Charles E. Griffith, III and Robert C. Evans of Nashville.

REVERSED AND DISMISSED

Opinion filed: Jun 2, 1978

Madison County has placed in its educational budget some revenue sharing funds it received from the federal government. The only issue before the Court is whether Madison County must apportion that money with the City of Jackson on the basis of the average daily attendance of pupils in their respective school systems. Our answer is no.

The statute requiring Madison County to apportion money al-

[2]

located to school purposes is T.C.A. §49-605 which provides in pertinent part as follows:

> "49-605. Levying of School Tax—Funds—Expenditure—Fiscal Accounting—A.. For each school system there shall be levied for current operation and maintenance not more than one school tax for all such grades as may be included in the local school program. Each system shall place in one separate school fund all school revenues for current school

operation purposes received from the *state*, *county*, *and other political subdivisions*, if any. (Emphasis supplied) . . . All school funds for current operation and maintenance purposes *collected* (Emphasis supplied) by any county, . . . , shall be apportioned by the county trustee among the county, city and special school districts therein on the basis of the average daily attendance maintained by each, during the current school year . . ."

We hold that T.C.A. §49-605 has no application to funds received by Madison County under the State and Local Fiscal Assistance Act of 1972, as amended.

It results that the judgment of the trial court is reversed and this lawsuit is dismissed. All injunctions and other extraordinary writs are hereby dissolved.

The costs in the trial court and in this Court are adjudged against the City of Jackson.

PER CURIAM

APPENDIX C

IN THE SUPREME COURT OF TENNESSEE
AT
JACKSON

May 29, 1979
FOR PUBLICATION

STATE OF TENNESSEE, EX REL. ROBERT CONGER, ET AL PETITIONERS	)	
VS.	)	CERTIORARI TO COURT OF APPEALS
MADISON COUNTY, ET AL RESPONDENTS	)	

OPINION ON PETITION TO REHEAR

(Filed May 29, 1979)

The petition to rehear is respectfully denied.

Much of the petition takes two members of the Court to task for allegedly applying a "balancing of the equities" test. The opinion shows facially that equitable considerations formed no part of the Court's construction of the statute. After construing Section 49-605, T.C.A., and holding that it was inapplicable to Federal Revenue Sharing Funds, we said:

> This result not only is dictated by the language of the statute, but is commanded by considerations of equity and fundamental fairness.

Thus, it is evident that the matter of "balancing equities" formed no part of the statutory construction consideration.

[2]

Moreover, three members of this Court expressly disapproved these considerations, thus rendering this portion of the opinion dicta and ineffective.

This Court is acutely aware of the financial considerations involved and is not unsympathetic to the problems of the City of Jackson. The City's prayer for relief must be addressed to the General Assembly. We have construed the appropriate statutes and are satisfied with the conclusions we have reached.

All members of the Court continue to adhere to their previously expressed views.

/s/ Henry
HENRY, C.J.

Concurrences in this Memorandum
Fones, J.
Copper, J.
Brock, J.
Harbison, J.

APPENDIX D

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553 SOUTH WESTERN REPORTER, 2d SERIES

CITY OF HARRIMAN et al., Petitioners,

v.

ROANE COUNTY, Tennessee, et al., Respondents.

Supreme Court of Tennessee.

July 25, 1977.

Action was brought seeking, inter alia, declaratory judgment with respect to distribution of public funds by county to separate city school system. The Equity Court, Roane County, James O. Phillips, Jr., Chancellor, entered decree denying claims of city school system and the city system appealed. The Court of Appeals affirmed and certiorari was granted. The Supreme Court, Harbison, J., held that: (1) separate city school system was not entitled to share in amount raised by county for interest and debt service from separate countywide tax for retirement of school bonds assumed by county; (2) it was improper to appropriate proceeds of wholesale beer tax for school purposes; (3) city school system was entitled merely to injunctive relief against future allocation, and (4) city school system was entitled to share in remaining half of retail sale tax proceeds of county.

Affirmed in part, reversed in part, and remanded.

1. Schools and School Districts 97(5)

City operating separate school system within county was not entitled to share in funds collected by county to pay interest and retire school bonds assumed by county after it took over a previous separate school system of another city, where funds used to retire those assumed school bonds were not derived from county school tax or any funds allotted to annual county school budgets and were apparently being collected under a separate county-wide tax. T.C.A. §§ 49-605, 49-711.

2. Injunction 189

Intoxicating Liquors 95

Quarterly county court was not authorized to apply proceeds of the wholesale beer tax to regular county school fund without making any division within the separate city school system in county, but since action taken was unauthorized the city was not entitled to share in the illegally appropriated funds and its only relief was a permanent injunction restraining such improper allocation by county in future. T.C.A. § 49-605.

3. Schools and School Districts 17.19(6)

County courts may not take money raised for school purposes and appropriate them for different purposes or obtain monies raised for purposes other than school purposes and use them for school purposes.

4. Intoxicating Liquors 95

County could not lawfully appropriate proceeds of wholesale beer tax to school purposes. T.C.A. § 57-301.

5. Schools and School Districts 19(3)

Where county, in accordance with statute, did divide with city school system on average daily attendance basis one half of its sales tax proceeds, with respect to the remainder county was required to share with city school system. T.C.A. §§ 49-605, 67-3052(1), (2)(a).

6. Schools and School Districts 11

Public education is essentially a state rather than a county or municipal function, and the general education statutes contemplate a uniform statewide system of public education. T.C.A. §§ 49-605, 67-3052(1), (2)(a).

7. Schools and School Districts 19(1)

Where county does not make a special purpose levy but lawfully appropriates funds to current school operations, those funds become subject to apportionment pro-

[905]

visions of general school statutes. T.C.A. § 49-605.

William A. Newcomb, Harriman, for petitioners.

Joe H. Walker, Harriman, for respondents.

OPINION

HARBISON, Justice.

This action was instituted by the City of Harriman, its Board of School Directors and some taxpayers, seeking a

declaratory judgment and incidental relief against Roane County and certain of its officials in connection with the distribution of public funds. Also involved was the interpretation of a contract executed between officials of the respective city and county school systems.

The case was tried on oral testimony. The Chancellor resolved the contract issues favorably to the contentions of the plaintiffs, petitioners here, holding the contract to have been cancelled. He also awarded the city schools a proportionate share, based upon average daily attendance, of certain payments received by the county in lieu of property taxes. No appeal has been taken as to either of these aspects of the case.

The Chancellor held that the city school system was not entitled to a division of payments being made by the county representing interest on certain school bonds assumed by the county. He also held that the city system was not entitled to share in proceeds derived from a wholesale beer tax, which proceeds were being allocated by the Quarterly County Court to the annual budget of the county schools. He further concluded that the city could not share in certain county sales tax receipts which were also being allocated to the regular county school budget.

The Court of Appeals affirmed the Chancellor in denying the claims of the city school system to any of these funds. We granted certiorari to give further consideration to the issues.

A. *Interest on School Bonds Assumed by the County*

Both the pleadings and the testimony in regard to this issue are brief. Prior to 1973 the City of Rockwood

operated a separate school system within Roane County. In that year the county purchased the schools and related equipment from the City of Rockwood. It assumed responsibility for the payment of school bonds which had been issued by the city. There is testimony that the county makes semi-annual payments to the city out of the county "debt service fund" so that the city may retire these bonds and pay the interest thereon. This debt service fund is created by a special property tax levied by the county.

According to the pleadings and statement of counsel, the county has either paid or is paying to the City of Harriman a proportionate amount of the principal of these school bonds, although it denies any legal obligation to do so.[1] The petitioners contend, however, that the city is also entitled to receive from the county additional amounts representing the interest and debt service on the bonds.

No authority has been cited by the petitioners in support of this proposition. They basically contend that the city is entitled to an apportionment pursuant to T. C. A. § 49-605, which directs apportionment of all school funds "for current operation and maintenance purposes collected by any county . . . ."

[1] It affirmatively appears from the record that the funds used to retire the Rockwood school bonds are not derived from the county school tax or any other

1. But see T. C. A. § 49-711.

funds allotted to the annual county school budgets. Apparently the bonds are being retired under a separate county-wide tax, and both interest and principal are being paid out of that levy. It is not shown that the funds used for retirement of these bonds are "for current operation and maintenance purposes", and we affirm the holding of the courts below that the city is not entitled to a division of the amounts representing interest payments and debt service. The assignments of error pertaining to this issue are overruled.

B. *The Wholesale Beer Tax*

It is the basic insistence of petitioners that the Quarterly County Court is not authorized by law to apply the proceeds of the wholesale beer tax to the regular county school fund, and that such action on its part is illegal. Neither court below appeared to consider this contention. Without citation of authority, both of them held that the Quarterly County Court could, in its discretion, so allocate these tax proceeds without making any division with the separate city school system.

[2] We are of the opinion that the position of the petitioners is correct, under well-settled authorities in this state, and that the action of the Quarterly County Court is improper. Under the same authorities, since the action taken is unauthorized, the petitioners are not entitled to share in these illegally appropriated funds, and the only relief which can be given is a permanent injunction, restraining such allocation in the future.

T. C. A. §49-605 provides as follows:

> "A. For each school system there shall be levied for current operation and maintenance not more than one school tax for all such grades as may be included in the local school program. Each system shall place in one separate school fund all school revenues for current school operation purposes received from the state, county, and other political subdivisions, if any. . . . All school funds for current operation and maintenance purposes collected by any county, [with an exception not here pertinent] shall be apportioned by the county trustee among the county, city and special school districts therein on the basis of the average daily attendance maintained by each, during the current school year."

There is no question in the present case but that Roane County does levy a property tax for school purposes, and that the amount of this tax is being shared, on an average daily attendance basis, with the school system of the City of Harriman.

The petitioners alleged, however, and for all practical purposes the respondents admitted, that the Quarterly County Court is supplementing the funds used for the operation of county schools with proceeds from the wholesale beer tax and a part of the retail sales tax, for the express and deliberate purpose of keeping the school tax levy as low as possible. Since these special tax receipts are not divided with the city schools, taxpayers and school children residing in the city have been discriminated against, contrary to the provisions of the general education statute set out above.

[3] In the leading case of *State ex rel. Davidson County Board of Education v. Pollard*, 124 Tenn. 127, 136 S.W. 427 (1911), it was expressly held:

". . . [I]t is beyond the power of county courts of this State to take moneys raised for school purposes and appropriate them for other different purposes, or to take moneys raised for purposes other than school purposes and use them for school purposes." 124 Tenn. at 136, 136 S.W. at 429.

The Court further stated:

"This holding does not mean that that portion of the population of the counties of the State interested especially in the public schools and public school buildings are without remedy. All the law requires

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is that each fund be kept separate and used for the purpose for which it was collected. The law is simple in its provisions for the raising of funds to run the schools, and all that is required in that regard is that the particular means provided by statutes be pursued. The slipshod method of using just any fund that might be on hand and available for just any purpose that might arise is not authorized by law and cannot be sanctioned by the courts." *Ibid.*.

This holding has been followed in many later cases. In *Maury County v. Whitthorne*, 174 Tenn. 384, 126 S.W.2d 304 (1939), the Court held that a Quarterly County

Court has no authority to appropriate general funds for any purposes other than those enumerated in what is now T.C.A. § 5-901 or in some other special statute.

In the case of *Board of Commissioners v. Obion County*, 188 Tenn. 666, 222 S.W.2d 7 (1949), a county had paid a bonus to its county school teachers out of general county funds. Officials of a separate city school system brought suit to obtain an equal amount for city teachers, contending that once general funds had been transferred into the school fund, the city school system was entitled to share on an average daily attendance basis. This Court held that the appropriation made by the Quarterly County Court to the county school teachers was not authorized by statute, and that the illegal nature of the appropriation was not changed by passing the funds into a school account. The Court said:

> "The fact that the county court made an unauthorized gift of county funds to the county school teachers, can be no basis for complainants to demand that a court of equity decree a further unauthorized raid on the county treasury for their benefit." 188 Tenn. at 670-671, 222 S.W.2d at 9.

To the same effect is the case of *State ex rel. Baird v. Wilson County*, 212 Tenn. 619, 371 S.W.2d 434 (1963). There a Quarterly County Court had appropriated substantial sums from general county funds and used them for elementary school purposes. Special school districts sought to recover a proportionate amount, but the Court held that the initial appropriations of the general funds to the school funds were illegal and unauthorized. It therefore enjoined future transfers of general funds into the school fund, but denied recovery of funds already

diverted, since they had not properly become part of the school fund subject to division between the county and the special school districts. *See also State ex rel. Cope v. Davidson County*, 198 Tenn. 24, 227 S.W.2d 396 (1955), holding unauthorized and illegal a county court appropriation from general funds for "teacher transportation" in the county schools.

[4] We believe that these principles are controlling here, and that the courts below erred in holding that the county could lawfully appropriate proceeds of the wholesale beer tax to school purposes, without specific statutory authorization.[2] The judgments are reversed as to this aspect of the case, and the cause is remanded to the Chancery Court with directions to enter a permanent injunction, restraining respondents from further allocating the beer tax proceeds to the annual county school budget. If additional county officials need to be joined for the purposes of such injunction, appropriate amendments to the pleadings and proper process should be allowed. For the reasons stated in the foregoing authorities, however, petitioners are not entitled to share in any previous beer tax proceeds which have been diverted into the county school funds.

C. *Retail Sales Tax Proceeds*

A different situation is presented as to retail sales tax proceeds. Under T.C.A.

2. Nothing in the statutes governing the beer tax authorizes the use of these tax receipts for school purposes. See T.C.A. §§ 57-301 et seq.

§ 67-3052(1), the county is directed to expend one-half of its sales tax proceeds for school purposes, and under T.C.A. § 49-605 these are to be divided with the city school system on an average daily attendance basis. Apparently these statutes have been complied with, and no issue has been made as to this one-half of the county retail sales tax receipts.

The governing body of the county, however, is authorized by T.C.A. § 67-3052(2)(a) to allocate the remainder of county sales tax receipts "to such fund or funds of the county" as it shall direct.

In accordance with these provisions the Quarterly County Court of Roane County has allocated the remaining portion of the county's share of retail sales tax proceeds to the school fund, to be used in meeting the annual budget for the county schools. This part of the sales tax proceeds has not been divided with the city school system.

[5] We are of the opinion that the contentions of the petitioners that these funds must be shared with the city school system are well taken, and that the courts below were in error in holding otherwise. The provisions of T.C.A. § 49-605 are mandatory. They require that all school funds for current operations and maintenance purposes collected by a county, except those used for pupil transportation, "shall be apportioned by the county trustee among the county, city, and special school districts therein on the basis of the average daily attendance maintained by each, during the current school year."

[6] In many well-considered cases since the first general education act was passed in Tennessee in 1925, it has been recognized that public education is essentially a state, rather than a county or municipal, function. The general education statutes contemplate a uniform state-wide system of public education.

In one of the leading cases on the subject, *Board of Education of the Memphis City Schools v. Shelby County*, 207 Tenn. 330, 339 S.W.2d 569 (1960), the general education statutes enacted up to that time were discussed in depth. In that case a private act purporting to authorize a different distribution of funds between the city and county school systems from that provided in what is now T.C.A. § 49-605 was held unconstitutional and potentially disruptive of the uniform system contemplated by the general statutes.

In that case, the Court said:

> "The general purpose and plan of the Education Acts passed by the Legislature of Tennessee, beginning with the Act of 1925, referred to hereinabove, was to establish and maintain a *uniform system* of public education in this State, public education being primarily a State function. The philosophy permeating such general uniform plan, as set out in said General Education Acts, in so far as pertinent to the issues in these causes, provides for a division of all county school funds, with the exception of funds for the transportation of pupils attending the public schools, between the County School System and the School systems operated by municipalities or special school districts, such as the City of Memphis and its Board of Education, within the county, on a proportional

basis of the average daily attendance of pupils attending the various schools in a county." 207 Tenn. at 345, 339 S.W.2d at 576.

Further, the Court said:

"Education of the youth of each county is the primary purpose of our State Educational System, as reflected throughout all of its General Education Acts, and the apportionment of local school funds under the general law on the basis of average daily attendance of pupils in the various schools gives to every school system its proportional and fair share of said funds, so, in a sense, each pupil may be afforded the same opportunity to obtain an education, regardless of place of residence." 207 Tenn. at 351, 339 S.W.2d at 578.

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Respondents rely upon the provisions of T.C.A. §49-201(2) and (7), dealing with powers of the Quarterly County Court under the education statutes, as follows:

"(2) To consider, on the recommendation of the county board of education, school budgets for the county elementary and county high schools, and to provide necessary funds to enable said county board to meet all obligations under the adopted budgets."

* * *

"(7) To levy such taxes for county elementary and county high schools as may be necessary to meet

the budget submitted by the county board of education and adopted by the quarterly county court."

[7] These statutes have been held to permit the governing body of a county to make a special tax levy for the building, repair and equipment of county schools, without division under T.C.A. §49-605. *See Southern v. Beeler*, 183 Tenn. 272, 282-290, 195 S.W.2d 857 (1946); *State ex rel. Cope v. Davidson County*, 198 Tenn. 24, 29-31, 277 S.W.2d 396 (1955).

Where, however, the county does not make such a special purpose levy, but lawfully appropriates funds to current school operations, as had been done here with the portion of sales taxes at issue, then those funds become subject to the apportionment provisions of the general school statutes. In the *Southern* case, *supra*, the county allotted tax proceeds to the school budget under the guise of a special levy for repair and maintenance. It was held that these funds had to be divided with a city school system. *See* 183 Tenn. at 290-291, 195 S.W.2d 857.

Therefore, while the Quarterly County Court is certainly not obligated to allocate these receipts to a current school budget, when it does do so we are of the opinion that special school districts within the county are entitled to a proportionate part under T.C.A. §49-605. Accordingly, we are of the opinion that the courts below erred in holding that the second portion of retail sales tax proceeds appropriated by the Quarterly County Court to the annual school budget were not subject to division with the city school system.

In view of the conclusions reached by the Chancellor, he did not comment upon the evidence offered on this

subject, including the statistics filed with the answer of the respondents. Neither he nor the Court of Appeals considered whether division should be allowed with respect to any school years prior to the filing of the suit. Neither party has attempted to brief that question. The principal relief which petitioners have sought is a declaratory judgment.

Since the issues are not fully developed, we remand the cause to the Chancery Court for disposition of any further question concerning the division of these retail sales tax proceeds.

All costs incident to the appeal of this case are taxed to respondents. The Chancellor will fix all other costs.

COOPER, C. J., and FONES, HENRY and BROCK, JJ., concur.

APPENDIX E

State of Tennessee Statute

Section 49-605 Tennessee Code Annotated
(Emphasis Supplied)

"49-605. LEVYING OF SCHOOL TAX - FUNDS - EXPENDITURE - FISCAL ACCOUNTING. -A. *For each school system there shall be levied for current operation and maintenance not more than one school tax for all such grades as may be included in the local school program. Each system shall place in one separate school fund all school revenues for current school operation purposes received from the state, county, and other political subdivisions, if any.* However, any county which was a nonequalizing county in 1955-56 and which has within its borders a city or special district operating a system of public schools and which county in the current school year operates a system of public school transportation, may levy a special tax to cover that portion of the total cost of such public school transportation system as is over and beyond the allowed cost of pupil transportation within the minimum foundation school program of such county as determined under the provisions of subsection B of Sec. 49-602. The proceeds of such special transportation tax levy shall be set up in a special account hereinafter to be known as the 'Public School Pupil Transportation Fund' and shall be disbursed on order of the county board of education for public school transportation services only. *All school funds for current operation and maintenance purposes collected by any county, except the*

funds raised by any local special pupil transportation tax levy as authorized in this subsection, shall be apportioned by the county trustee among the county, city, and special school districts therein on the basis of the average daily attendance maintained by each, during the current school year. For the purposes of making the apportionment of local school funds as set forth in this subsection, and in defining the average daily attendance for the current school year, the county superintendent of schools and the county trustee shall be guided by the following procedure:

1. The county superintendent of schools shall recertify to the county trustee at the end of the first quarter of the current fiscal year the average daily attendance during the preceding school year.

2. During each of the first and second quarters of the current school year the county trustee shall use the average daily attendance figure for the preceding school year as recertified to him by the county superintendent of schools in making the tentative apportionments of the school funds as provided for in this subsection during the first and second quarters of the current school year.

3. Before the end of the third quarter of the current school year the county superintendent of schools shall certify to the county trustee the best estimate which he can make of the average daily attendance in the county schools and in the schools of the city and special school districts in such county, during the current school year; and upon this best estimate, the county trustee shall make the tentative apportionments of school funds for the third quarter of the current school year.

4. As early as possible before the close of the current school year, the county superintendent of schools shall certify to the county trustee the correct average daily attendance for the entire current school year.

5. Thereupon, the county trustee shall apportion the entire amount of county school funds for the current school year in keeping with the provisions of this subsection, on the basis of the correct total average daily attendance during the current school year in the county schools and in the respective city and special district schools, making such adjustments as may be necessary on account of the tentative apportionments made to such school systems during the first three quarters (3/4) of the current school year.

B. *A city or special school district participating in state minimum foundation school program funds shall raise and expend annually for current operation and maintenance of its schools an amount of money in addition to the amount required to be raised by the county* at least equal to that which a tax levy of fifteen cents (15¢) on each one hundred dollars ($100) of taxable property for the current year in said city or special school district would produce if the same were all collected.

C. The state school funds distributed under the provisions of this chapter to a county for county schools shall be paid to the county trustee in the amounts as certified under the authority of the state commissioner of education. Such funds for city schools or for special district schools shall be distributed directly to the treasurer or proper fiscal agent of such city or special school district in the amounts as certified under the

authority of the state commissioner of education. The county trustee shall be properly bonded as now provided by law, and the county judge or chairman of the county court shall so certify to the state commissioner of education. The city or special school district treasurer or fiscal agent shall be bonded under standards set up by the state comptroller, and the chairman of the board of education of such city or special school district, shall so certify to the state commissioner of education.

D. 1. The state commissioner of education shall prescribe a system of school fiscal accounting for all school systems, and he shall review the fiscal public school records in all school systems to the end that the expenditure of funds, whether for current operation and maintenance purposes, capital outlay purposes, or other school purposes, shall be properly accounted for and safeguarded.

2. Each school system shall within thirty (30) days after the beginning of each fiscal year, submit to the state commissioner of education, on forms prescribed by him, a complete and certified copy of its entire school budget for the current school year. Each school system shall on or before August 1 of each year submit to the state commissioner of education on forms prescribed by him, a correct and accurate financial report of the receipts and expenditures for all public school purposes in such school system, during the school year ending on the June 30 next preceding the August 1 hereinabove set forth. On or before July 15 of each school year, the county trustee of each county or the treasurer or fiscal agent of each city or special school district shall submit to

the state commissioner of education on forms prescribed by him a complete certified copy of the financial report of the respective school system. Each school system shall deliver to the state commissioner of education within ten (10) days of receiving the same, a copy of the audit report required by law to be made of the school funds of the said school system. No distribution of state funds shall be made to any school system which has not furnished the state commissioner of education with all records and reports required by this chapter and by other laws for the current or the preceding school year.

3. Each local board of education shall issue school warrants, or checks, on or before June 30 of each fiscal year for all contracts and other fiscal transactions for current operation and maintenance purposes for the current school year which have been completed by June 15 of the current school year.

4. Outstanding school warrants and obligations of a preceding school year or years shall not be paid out of either the state school funds for the current school year or the local funds required to be raised during the current fiscal year for participation in the state funds. State school funds received by a local school system shall be used exclusively for the operation and maintenance of the schools under the minimum foundation school program during the fiscal year unless otherwise provided by law.

E. Should it develop that by error an allocation of funds has been made to any school system not entitled to receive the same by virtue of a failure to comply with the requirements of this chapter, or otherwise, or if it

should develop that more funds have been distributed to any school system than such system is entitled to receive under the provisions of this chapter, such amount so erroneously distributed shall be returned to the state treasury by such school system; and upon a failure to do so, the state commissioner of education shall retain and withhold the amount thereof from any funds available for distribution to such school system in the current or any subsequent school year. If any school funds are misappropriated or illegally expended by a school system, an amount equivalent thereto shall be returned to the proper school fund; and upon a failure to do so, the state commissioner of education may retain and withhold the amount thereof from any funds available for distribution to such school system in the current or any subsequent school year.

F. In the event that the local fiscal body has not adopted a budget for the operation of the public schools by July 1 of any year, the school budget for the year just ended shall continue in effect until a new school budget has been approved. However, expenditures mandated by this chapter and implemented by rules, regulations, and minimum standards of the state board of education shall be incorporated into this continuing budget."